



ALAN WILSON
ATTORNEY GENERAL

February 2, 2011

The Honorable Nikki Haley
Governor of State of South Carolina
State House, 1st Floor
Columbia, South Carolina

Re: State of Florida, et al. v. United States Department of Health and Human Services, et al.

Dear Governor Haley:

The Order in this case of the Honorable Roger Vinson, dated January 31, 2011, declared the Patient Protection and Affordable Care Act to be unconstitutional and, therefore, void. Judge Vinson recognized the "longstanding presumption 'that officials of the Executive Branch will adhere to the law as declared by the Court [and that] [a]s a result, the declaratory judgment [ruling the Act void] is the functional equivalent of an injunction.'" *Order* at p. 75.

While the decision is obviously subject to appellate review, Judge Vinson's reasoning set forth above, is well established in the law. Long ago, the United States Supreme Court noted that "[a]n unconstitutional act is not a law [I]t is in legal contemplation as inoperative as though it had never been passed." *Norton v. Shelby Co.*, 118 U.S. 425, 442 (1886). Moreover, the Court stated in *Samuels v. Mackell*, 401 U.S. 66, 72 (1971) that "declaratory relief alone has virtually the same practical impact as a formal injunction would."

The question is what are the possible legal scenarios for the future? As referenced above, the Act is currently void and unenforceable. We believe South Carolina is on sound legal footing. In our view, Judge Vinson's Order will ultimately be sustained by higher courts. Before the Act ultimately is reviewed by the Supreme Court, there are any number of legal possibilities, including the seeking of a stay of Judge Vinson's Order by the United States. We thus must proceed prudently and vigorously from a legal standpoint as we face various possible attacks upon Judge Vinson's Order.

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Again, we have every confidence that Judge Vinson's decision will be upheld. We will, of course, continue to advise you as this case progresses.

Sincerely,

A handwritten signature in blue ink that reads "Alan Wilson". The signature is fluid and cursive, with the first name "Alan" and last name "Wilson" clearly distinguishable.

Alan Wilson